

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIA VILLATORO and JOSE VICTOR  
VILLATORO,

No. C 12-03093 WHA

Plaintiffs,

v.

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS AND REQUEST FOR  
JUDICIAL NOTICE**

CITIBANK N.A., AS TRUSTEE FOR  
AMERICAN HOME MORTGAGE  
ASSETS TRUST 2006-4, MORTGAGE-  
BACKED PASS-THROUGH  
CERTIFICATES SERIES 2006-4, and all  
persons unknown, claiming any legal or  
equitable right, title, estate, lien or interest  
in the property described in this complaint  
adverse to Plaintiff's title thereto, and  
DOES 1 through 30, inclusive.

Defendants.

In this action challenging a foreclosure sale, defendant CitiBank N.A.'s motion to  
dismiss is **GRANTED**.

After a default and an attempt at loan modification, defendant CitiBank held a trustee's  
sale and took back plaintiffs' home in its own name. The next day, plaintiffs filed for  
bankruptcy, and their case was later converted to Chapter 7. Defendant filed an unlawful  
detainer action in state court, and a few months later plaintiffs filed their own state court action  
to set aside the trustee's sale, which was removed here by defendant based upon 28 U.S.C. 1332  
and 1441. Meanwhile, the bankruptcy discharge was obtained and the bankruptcy action was  
closed. On June 22, 2012, defendant moved to dismiss plaintiffs' complaint for lack of standing.

1 This order holds that plaintiffs lack standing to sue to set aside the trustee's sale. When  
2 plaintiffs filed for bankruptcy, all of their claims for relief passed to the Chapter 7 trustee. *See*  
3 *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir. 2001) (plaintiff who fails to  
4 amend bankruptcy schedules to list known claims against defendant is precluded from pursuing  
5 those claims). Plaintiffs did not amend their bankruptcy schedules or disclosure statements  
6 during their bankruptcy proceedings to identify the claims asserted in their complaint. When the  
7 instant lawsuit was commenced, therefore, plaintiffs lacked standing to pursue their claims.

8 Defendant requests that judicial notice be taken of the following documents pertaining to  
9 this action: (1) a deed of trust recorded on July 28, 2006, in the official records of Contra Costa  
10 County; (2) a notice of default and election to sell under deed of trust recorded on June 21, 2011,  
11 in the official records of Contra Costa County; (3) an assignment of deed of trust recorded on  
12 June 23, 2011, in the official records of Contra Costa County; (4) a notice of trustee's sale  
13 recorded on September 19, 2011 in the official records of Contra Costa County; (5) a trustee's  
14 deed upon sale recorded on December 20, 2011, in the official records of Contra Costa County;  
15 (6) a voluntary petition filed in United States Bankruptcy Court, Northern District of California  
16 Case No. 12-40882 on January 30, 2012; (7) first amended schedules B & C filed in United  
17 States Bankruptcy Court, Northern District of California Case No. 12-40882 on February 27,  
18 2012; (8) discharge of debtor and final decree filed in United States Bankruptcy Court, Northern  
19 District of California Case No. 12-40882 on June 4, 2012.

20 Defendant's request for judicial notice is **GRANTED**, as the contents of these documents  
21 are "not subject to reasonable dispute" in that as public records, they are "capable of accurate  
22 and ready determination by resort to sources whose accuracy cannot reasonably be questioned."  
23 FRE 201.

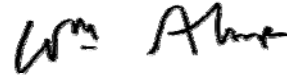
## 24 CONCLUSION

25 Because plaintiffs lack standing to bring their claims, defendant's motion to dismiss is  
26 **GRANTED**. Plaintiffs have requested leave to amend so that they may "seek the trustee's  
27 abandonment of the claim or obtain the trustee's agreement to proceed forward" with this action  
28 (Opp. 8). Plaintiffs will have **21 CALENDAR DAYS** from the date of this order to file a motion,

1 noticed on the normal 35-day track, for leave to file an amended complaint securing the trustee's  
2 participation in or abandonment of plaintiffs' claims.

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4 **IT IS SO ORDERED.**

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6 Dated: July 25, 2012



7 WILLIAM ALSUP  
8 UNITED STATES DISTRICT JUDGE  
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